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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
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9 WILLIE SMITH,
10 Plaintiff,
11 vs.
12 HOMES, et al.,
13 Defendants.
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3:13-cv-00202-MMD-WGC

ORDER

re: Defendants' Motion to Strike
(Doc. # 42)

15 Before the court is Defendants' Motion to Strike (Doc. # 42) Plaintiff's Response (Doc. # 41) to
16 Defendants' Motion to Dismiss (Doc. # 36.) Defendants seek to strike Plaintiff's Opposition (Doc. # 41)
17 because it is untimely. (Doc. # 42.)

18 Plaintiff has opposed Defendants' motion to strike. (Doc. # 43.) Plaintiff represents that after
19 Defendants' motion was filed, his personal property was taken from him and he was placed in suicide
20 watch. According to the Plaintiff, this occurred on March 4, 2014. (*Id.*) On March 6, 2014, Plaintiff was
21 transferred by Nevada Department of Corrections (NDOC) to Northern Nevada Correctional Center and
22 again was placed on suicide watch. (*Id.*) Plaintiff was later housed in the mental health unit. (*Id.* at 4.)
23 His personal property was returned to him on March 27, 2013. He states he advised the court of his
24 change of address (Doc. # 40, 4/2/14), and thereafter commenced work on his opposition to Defendants'
25 motion to dismiss. (*Id.* at 5.) Plaintiff asks for relief because of "excusable circumstances."

26 Plaintiff also states he believed this case had been stayed. (Doc. # 43 at 5). While the case had
27 been stayed for 90 days on July 26, 2013, to allow the parties to discuss settlement (Doc. # 5), that stay,
28 however, terminated on October 24, 2013.

1 Under the circumstances, Plaintiff's failure to timely file his opposition is excusable. It is, of
2 course, the court's preference any substantive issues, particularly dispositive motions, be resolved on the
3 merits. Although the case had not been stayed, and although Plaintiff perhaps should have sought leave
4 of court to file a tardy response, in the exercise of the court's discretion, Defendants' motion to strike
5 (Doc. # 42) is **DENIED**.

6 IT IS SO ORDERED.

7 DATED: April 28, 2014.

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10 WILLIAM G. COBB
11 UNITED STATES MAGISTRATE JUDGE
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